IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.3823 of 2004
Date of Decision:- 17.11.2006

Khajan Singh ....Appellant.
through
Mr.A.K.Chopra, Sr.Advocate with
Mr.Harminder Singh, Advocate

vs.

Gram Panchayat Vill.Ghorewah & anr. ....Respondents
through
Mr.Sushil Saini, Advocate

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1.Whether Reporters of local papers may be allowed to see the judgment?
2.To be referred to the Reporters or not?
3.Whether the judgment should be reported in the Digest.

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SURYA KANT, J.

This regular second appeal is at the instance of the plaintiff whose suit for permanent injunction has been dismissed by both the Courts below.

(2) Briefly stated, the facts are that the subject land, measuring 21 kanals 15 marlas, is undisputedly owned by the respondent-Gram Panchayat. Alleging that he has improved the above-stated *Gair Mumkin* land after spending huge amount and, has thereafter planted fruit trees upon it and that he was being threatened with forcible dispossession on the pretext that the said land had been allegedly leased out to defendant No.2 (Ajit Singh), the appellant-plaintiff filed the present suit.

(3) In its written statement, the respondent-Gram Panchayat came up with the plea that the appellant has no right, title or interest in the suit

property which was leased out by it in favour of respondent No.2 through a valid auction. The Gram Panchayat denied that the appellant-plaintiff ever cultivated the suit land or spent any amount or had raised any construction thereupon. It also took a specific plea that the land was in possession of the lessee, namely, defendant No.2 who had raised some temporary hut/shed on it.

(4) On the basis of the pleadings the following issues were framed by the learned trial Court on 28.8.2000:-

> "1) Whether the plaintiff is in actual physical possession of the suit property?OPP
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> 2) Whether the suit property has been leased out in favour of defendant no.2 Ajit Singh by the Gram Panchyat for the year 2000-2001?OPD
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> 3) Whether defendant no.2 has been put in actual physical possession of the suit property on the basis of deed/resolution?OPD
>
> 4) Whether the plaintiff has concealed material facts from the court. If so its effect?OPD
>
> 5) Whether the suit is not maintainable in the present from?OPD
>
> 6) Relief."

(5) While deciding issues No.1 to 3, both the Courts have concurrently held that :-

(i) though the plaintiff was shown to be in possession of a part of the suit land as *Gair Dakhilkar* on payment of rent at the rate of Rs.100/- per acre per annum, however, he has admitted in his deposition that no rent was ever

paid by him to the Gram Panchyat; (ii) As per the revenue record the remaining land is shown in possession of the Gram Panchayat; (iii) the resolutions passed by the Gram Panchyat from July 1999 till 2002 (Ex.D-2 to Ex.D-5) clearly prove that the land in dispute has been auctioned from time to time in favour of different lessees; (iv) defendant No.2 had taken the land on lease on 20-5-2002 through an open auction and pursuant thereto *pattanama* i.e. the lease deed Ex.D-5 stood executed in his favour; (v) the appellant-plaintiff has failed to prove his possession over the land in question and the revenue record also belies his stand; and (vi) no evidence has been led by the appellant to prove as to how and when he came into possession of the suit property.

(6) Based upon these findings, both the Courts below have held that the appellant is not entitled to seek injunction against the true owner of the land. Consequently his suit has been dismissed, giving rise to this regular second appeal.

(7) I have heard learned counsel for the parties and have perused the impugned judgments as well as records with their assistance.

(8) Learned counsel for the appellant contended that since the appellant has not been found to be a tenant and though he is in possession of the suit property for the last 25 years, he has acquired ownership rights by way of adverse possession. It is also contended that in the revenue record the appellant is shown in possession of a part of the suit land, therefore, the respondents ought to have been restrained from dispossessing him except in due course of law. He has further contended that the only remedy with the Gram Panchayat was to initiate eviction proceedings against the appellant under Section 7 of the Punjab Village Common Lands

(Regulation) Act, 1961 and, as such the appellant's possession till initiation of such proceedings needs to be protected.

(9) After giving my thoughtful consideration to the above-noticed contentions, I do not find any merit in this appeal. Firstly, the appellant cannot be permitted to plead an entirely new case in the second appeal. Secondly, the Courts below have concurrently held that the appellant is not in possession of the suit property or part thereof and, thus, the question of protecting his possession does not arise. Thirdly, it was the appellant who filed the present suit, therefore, the onus was upon him to prove his possession. Merely because in the revenue record for the years 1996-1997 he is shown to be in part possession of the suit land does not conclusively mean that he is in actual physical possession thereof. Fourthly, the plea that the Gram Panchayat should initiate proceedings under the 1961 Act ibid is wholly misconceived for the reason that the appellant being not in possession of the Gram Panchayat land, there is no occasion to initiate such proceedings on the assumption that he is an unauthorized occupant over the land.

(10) From the issues raised and determined by the Courts below, it is apparent that the controversy involved in the present case pertains to pure and simple questions of facts which have been concurrently answered by both the Courts against the appellant. These findings do not give rise to any substantial question of law requiring consideration by this Court.

(11) I, thus, do not find any merit in this appeal which is accordingly dismissed.

November 17, 2006 **(SURYA KANT)**
poonam **JUDGE**